अण्डमान तथा निकोबार राजपत्र

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अण्डमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 9th August, 2007.

No. 183/2007/F.No.3-445/2006-Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) read with Notification No.LR-1(59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour, the Lt. Governor, Andaman and Nicobar Islands, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair in the matter of an Industrial Dispute exists in between the employers in relation to the management of National Institute of Ocean Technology and their workman Shri Suleman Tirkey for adjudication.

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS
PORT BLAIR

Present: Shri M.S. Dwivedy
Presiding Officer, Industrial Tribunal

I.D. (IT) Case No.26 of 2003.

Suleman Tirkey … First Party Workman

Versus

The Management of National Institute
of Ocean Technology. … Second Party

Friday the 13th day of January, 2006

AWARD

1. The Present scheduled reference under clause (d) of sub-section (1) and sub-section (2A) of section 10 read with sub-section (5) of section 12 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) was made to this Industrial Tribunal by the Central Government for adjudication. At the time of making the reference the referring authority was satisfied that an Industrial dispute exists in between the employers in relation to the Management of National Institute of Ocean Technology and their workman Shri Suleman Trikey and the reference has been made to this Tribunal for adjudication of the following dispute:-

"Whether the action of the Management of National Institute of Ocean Technology (NIOT), Chennai in terminating the services of Shri Suleman Tirkey was proper and legal? If not, to what relief the workman is entitled?"

2. On receipt of the reference notices were served upon both the parties and both of them appeared. The first party filed his statement of claim and the second party contested the same by filing a written statement.

3. The factual backdrop leading to the present reference is as follows:-

The first party Suleman Tirkey was initially appointed as a Project Attendant on daily rated basis with effect from 4.8.1998 till 11.1.1998 under the second party. His such daily appointment was extended from time to time with short breaks. On and from 19.7.2000 he was appointed on a consolidated salary of Rs. 2,800/- per month and he continued his service on such consolidated salary till 19.01.2002. The first party workman states that his services were terminated by the second party on and from 19.01.2002 without serving him any notice although he served under the second party as a Project attendant for a period of about 10 years. After his termination, the first party approached the second party with a prayer for reinstating him in service, but invain.

4. On 28th March, 2002 the second party published an advertisement in the Employment News inviting applications for many posts including project attendant. Seeing the advertisement the first party again approached the second party with a prayer for engagement him on duty, but the second party did not consider his prayer favourably. Thereafter he raised a dispute before the Conciliation Officer i.e. Labour Enforcement Officer (Central), who initiated a conciliation proceeding. The conciliation proceeding ultimately ended in failure and the appropriate Government has been pleased to refer the dispute to this tribunal for adjudication.

5. The second party contested the claim of the first party by filing a written statement contending, inter-alia, as follows:-

National Institute of Ocean Technology (NIOT) is a registered society. It is an autonomous institute under the Department of Ocean Development which implements various time bound technical projects. The field unit of NIOT is at A & N Centre for Ocean Science & Technology, situated at Dollygunj near Sri Nagar, Minnie bay. NIOT takes up various research projects with an ultimate aim of improving the socio – economic status of the Islands. The first party Suleman Tirkey was recruited through a public interview for the post of Project attendant purely on adhoc basis for a period of six months initially from 19.01.2000 on a consolidated salary of Rs. 2800/- per month. On completion of every six months he was granted extension after the performance review and finally on completion of 2 years he was relieved of his duties on 18.01.2002 i.e. on completion of his tenure of adhoc appointment. NIOT is having its own bye laws and Recruitment Rules. All posts at NIOT are on contract/adhoc and project mode excepting a few posts. As and when posts are created, the candidates are selected through advertisements following the recruitment procedures are prescribed by the Government of India Rules. The first party cannot claim for appointment directly without undergoing the recruitment procedure. While issuing appointment order, NIOT has very clearly indicated that the appointment will be purely temporary and will not confer on him any title to permanent appointment at a later date. The first party has accepted the terms and conditions and joined as Project Attendant knowing fully well that he was on adhoc and purely and temporary/project mode posts for a limited period of one or two years with an undertaking as having accepted the offer. The government rules also do not permit the individuals working in Societies to be directly absorbed and treated as regular employees

for implementation of the project. All the employees working under NIOT are on contractual/adhoc basis on consolidated salary as there is no sanctioned post by the Government for this programme. The claim of the first party cannot be treated in isolation. Only on humanitarian grounds the applications where kept on rolls

at Port Blair on temporary/project mode and were offered the project mode position in NIOT in the absence of any regular post. Therefore, the question of treating the application as employee for the purpose of fresh appointment in NIOT does not arise. The second party contended further that similarly situated two persons viz. Shri P.O. Shaji and Shri E. Krishnan preferred a writ application before the Hon'ble High Court at, Calcutta, Circuit Bench at Port Blair being W.P. No.19 of 2002 seeking for reinstatement in service as Project Attendant and Project Driver, which was finally disposed of on 30.09.2002 by rejecting the claim of the writ petitioners. The SLP filed before the Hon'ble Supreme Court was also dismissed on 30.11.2002.The second party denied that the first party worked under the second party from the year 1992 till 1997. It has been stated that the first party was initially appointed on daily rated basis under MPEDA (Marine Product Export Development Authority) in the year 1992 and he continued till 1997 with regular intervals. MPEDA is a different project having its own independent identity and has got no nexus with the second party. It is admitted that the first party was engaged by the second party with effect from 19.1.2000 till 18.1.2002 without any break. It is stated that the first party has worked under the second party for a period of 2 years only. Under the above facts and circumstances the second party states that the first party has no claim whatsoever and the prayer made by him is liable to be dismissed with exemplary costs.

6. The first party filed a rejoinder against the written statement filed by the second party contending, inter-alia, that Marine Product Export Development Authority (MPEDA) is a wing under the Department of Ocean Development, Government of India similar to that of National Institute of Ocean Technology. The services of the first party was terminated in violation of sections 25-F and 25-G of the Industrial Disputes Act, 1947. Remaining averments are simply reiteration of the facts made in their statement of claim.

7. The following are the point requiring determination in the present case

(i) Is the reference maintainable in facts and in law ?

(ii) Whether the first party is a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947 ?

(iii) Whether NIOT is an "Industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947 ?

(iv) Is the action of the Management of National Institute of Ocean Technology (NIOT), Chennai in terminating the services of Shri Suleman Tirkey legal and justified ?

(v) Is the workman entitled to be reinstated in service with all back wages and other service benefits?

Decision with reasons

8. All these points are taken up together for the sake of convenience in discussion as they are interlinked and inter-related.

9. In order to establish his case, the first party has filed his evidence on affidavit under order XVIII, rule 4 of the Code of Civil Procedure, 1908. He was not called upon for his cross-examination by the second party. In his evidence on affidavit the first party has corroborated the statements made by him in his original statements of claim. He stated that he has worked for more than 240 days in a calendar year under the second party without any break

and the second party has illegally terminated his services on and from 19.1.2002 without following the mandatory provisions of section 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947.

10. NIOT is a registered society and a technical arm of the department of Ocean Development, Government of India. It is not denied in the written statement filed by the second party that NIOT is an "Industry" within the meaning of section 2 (j) of the Industrial Disputes Act. It is also not denied that the first party is a "workman" within the meaning of section 2(s) of the Industrial Disputes Act. Admittedly, the first party was working under the second party as Project Attendant, which is not a managerial or

supervisory post. So I have no hesitation to hold that NIOT is an "Industry" and the first party is a "workman" within the meaning of sections 2(j) and 2(s) respectively of the Industrial Disputes Act, 1947.

11. According to the second party, the first party was recruited by NIOT, which is one of the projects of Ocean Development, Government of India, through a public interview as Project Assistant purely on adhoc basis initially for a period of six months from 19.1.2000. The second party employer claims that Suleman Trikey, the first party was not under the employment of NIOT from the year 1992 till 1997. It has been categorically stated that the first party was initially appointed on daily rated basis under MPEDA (Marine Product Export Development Authority) from the year 1992 till 1997 with regular interval and that MPEDA is a separate and different project having no nexus with the NIOT. However, the second party has admitted that the first party has worked under NIOT from 19.1.2000 till 18.1.2002 without any break. Relying on the judgement delivered by the Hon'ble High Court at Calcutta Circuit Bench at Port Blair in WP No. 19 of 2002 the second party stated in the written statement that the first party workman cannot have any claim in the present reference, since the claim of similarly situated employees of the second party has been negated by the Hon'ble High Court. On the other hand, it has been contended by the first party that MPEDA and NIOT are wings of department of Ocean Development, Government of India and as such since the first party workman at the initial stage worked under the direct control of MPEDA and thereafter he worked under the direct control of NIOT, his entire service should be treated as continuous service under the Ocean Development, Government of India. It has been further contended that the first party has served as Project Attendant under the second party for more than nine years till 18.1.2002 and on and from 19.1.2002 he was retrenched from service in gross violation of Section 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947. As such he prays for declaring the action of the second party as illegal and directing the second party to reinstate him in service with all back wages and service benefits.

12. I have perused the pleadings of the respective parties, the evidence on affidavit filed by the first party workman, the Judegment passed by the Hon'ble High Court at Calcutta Circuit Bench at Port Blair in WP No. 19 of 2002 and the materials available on record with meticulous care.

13. Before entering into the claim and counter claim of the parties whether the first party was initially appointed under the second party on 4.8.1992 or on 19.1.2000, let me first consider whether the retrenchment of the first party from service on and from 19.1.2002 is proper and legal. The second party has referred to an unreported judgement delivered by the Hon'ble High Court at Calcutta, Circuit bench at Port Blair in W.P.No. 19 of 2002 (P.O. Shaji and Anrs vs. Union of India and ors.) on 5.9.2002, in support of its contention in the written objection that as the writ application preferred by two other employees viz Shri P.O. Shaji and Shri E.Krishnan, seeking for reinstatement in the service, was rejected by the Hon'ble Court, the present first party workman, who also stands in the same footing of the writ petitioners before the Hon'ble Court, cannot have any claim in the present proceeding. I have gone through the judgement passed by the Hon'ble High Court with meticulous care and I find

that the facts and circumstances in the writ petition before the Hon'ble Court is squarely distinguishable from the facts and circumstances of the present case. The prayer of the writ petitioners before the Hon'ble High Court was for a direction upon the respondent authorities to regularize the services of the petitioners under the second party, to treat the petitioners as regular employees and to pay them regular salary from the initial date of appointment. The Hon'ble Court held, "normally, an adhoc employee has no right to hold the post and is not entitled to any order of regularization. But if such adhoc appointment is made against any sanctioned post or vacancy and on a basis which is consistent with the recruitment rules and if such adhoc appointment continues for a long period, the court have interfered and directed the employers to regularize such adhoc employees". However, the Hon'ble Court found that there was no sanctioned post and the temporary nature of the petitioner's appointment was writ large. The appointment was linked with a project, which has also come to an end. So, no mandate from the court to regularize such appointment can be issued. Under such circumstances the writ petition was disposed of with certain directions upon the respondents for following certain guidelines while making future appointments. Here the case in our hand is quite different. The question to be considered in the present case is whether the action of the second party in terminating the services of the first party workman is legal and justified.

14. Admittedly, the first party was engaged by the second party as Project Attendant with effect from 19.1.2000 and he continued till 18.1.2002 without any break. In other words, without entering into the crucial question whether the first party workman worked under the second party from 4.8.1992 or 19.1.2001, it can be safely concluded that the first party workman has completed 240 days of continuous work in course of 12 calender months under the second party and as such a right has accrued upon the first to get one month's notice in writing indicating the reasons for his retrenchment or the usual compensation in lieu of such notice as per the provisions of section 25-F of the Industrial Disputes Act before his retrenchment. Admittedly, no such notice, or compensation in lieu of such notice, appears to have been given to the first party workman. Thus it is crystal clear that the second party has not followed the provision of section 25-F of the Industrial Disputes Act, 1947, which mandates that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service, or any part thereof in excess of six months, and (c) notice in the prescribed manner is served on the appropriate Government.

15. It is not the case of the second party that the project for which the first party was engaged has come to an end, and as such, the services of the first party workman was no further required. In the written objection the second party has traversed all through as if the claim of the first party as one for regularization of his services, whereas the scheduled reference is otherwise challenging the Act of disengagement. The Act of disengagement of a workman from service has also been included within the definition of "retrenchment" under the Industrial Disputes Act, 1947. Annexure-B to the written statement of the first party is a copy of the offer of ad-hoc appointment of the first party to the post of Project Attendant. It appears therefrom that the appointment of the first party was purely temporary for a period of six months with the stipulation that the temporary appointment may be extended further after a performance review upto a maximum period of two years only or till the duration of the Project whichever is earlier. The services of the first party as Project Attendant were accordingly extended from time to time and he continued as such till 18.1.2002 and thereafter on completion of his tenure by office order No. 1302 dated 18.1.2002 he was relieved of his duties thereby disengaged from service. According to the second party, as it appears from the

written statement, as the tenure of the engagement of first party has come to an end, he has no claim for reengagement. But I am unable to accept the contention of the second party. As I have already pointed out, section 25-F of the Industrial Disputes Act mandates that no workman employed in any industry who has been in continuous service of 240 days in 12 calender months under an employer shall be retrenched by that employer until, (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service, or any part thereof in excess of six months, and (c) notice in the prescribed manner is served on the appropriate Government. Admittedly, neither any notice has been served upon the first party, nor the usual wage in lieu of notice and compensation has been to him nor the usual notice in the prescribed manner is served on the appropriate Government for retrenching the first party. Any clause in the Bye-Laws applicable to the unit of the second party and its employees cannot be said to have any over-riding effect of the provisions of section 25-F of the Industrial Disputes Act.

16. In view of my above findings and observations, I am of the firm opinion that since the second party has not followed the condition precedent to retrenchment of the first party workman, as mandated under section 25-F of the Industrial Disputes Act, 1947, the second party was not right in retrenching the first party workman from service and the said retrenchment is neither legal nor justified. Consequently, the first party workman is entitled to be reinstated into service with immediate effect. But the fact remains that the first party workman was a daily rated employee and under the principle of "no work no pay" he is not entitled to any back wages or other monetary benefits during the intervening period he remained

unemployed till this day, but he should be deemed to be in continuous service for other service benefits as if there had not been any retrenchment. In the given circumstances, I am inclined to hold that the first party workman should get the relief of reinstatement as sought for with effect from this day.

Hence,

Awarded

that the action of the Management of National Institute of Ocean Technology (NIOT), Chennai in terminating the services of Shri Suleman Tirkey was neither legal nor justified. The first party workman Shri Suleman Tirkey is entitled to be reinstated into service with immediate effect. The period of disengagement be taken notionally as period of employment for continuity of service without any back wages.

Let this Award be forwarded to the Lieutenant Governor (Administrator), Andaman & Nicobar Islands for favour of his information and due publication in the official gazette.

Given under my hand and seal of the court this the 13th day of January, 2005.

Typed at my dictation & corrected by me.

Sd/-
13.1.2006
P.O.

Sd/-
13.1.2006
(M.S. Dwivedy)
Presiding Officer
Industrial Tribunal
Andaman and Nicobar Islands

By order of the Lt. Governor, A&N Islands

Sd/-
(P.P. Sasidharan Nair)
Assistant Secretary (Labour).

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